IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: D. PLATT et al.

Application No.: 10/572,782

Filed: November 8, 2006

For: STABILIZED FORMULATIONS OF
     PHOSPHATIDYLSERINE

Attorney Docket No.:7056-X06-020

Conf. No. 3410

Examiner: FISHER, Abigail L.

RESPONSE

Mail Stop AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Restriction Requirement mailed December 4, 2008, Applicants respond as follows. Applicants elect <u>with traverse</u> Group I, claims 1-22, 24-25, 27-28, 30-35 and 42-44 drawn to a **stable** phosphatidylserine composition of matter. As duly noted in the requirement, restriction is governed by PCT Rules 13.1 and 13.2, as this application constitutes a National Stage of a PCT application.

Group II, claims 36-38 drawn to a process for the preparation of a stable phosphatidylserine composition, Group III, claim 39 drawn to a process for the preparing a stable phosphatidylserine oil-based liquid preparation by dissolving and Group IV, claim 40 drawn to a process for the preparing a stable phosphatidylserine oil-based liquid preparation by dispersion are all so linked as to form a single general inventive concept; there is a clear technical relationship among those inventions involving at least one corresponding technical feature. The corresponding technical feature is a stable phosphatidylserine composition, which is recited in the claims of

Application Ser. No. 10/572,782
Applicants: D. PLATT et al.
Response to Office Action mailed December 4, 2008

Group I, and which is the result of the method claims of Groups II, III and IV. Accordingly, the relationship between Group I composition claims and Groups II, III and IV method claims is a product and processes for the manufacture of the product, as expressed in 37 CFR 1.475(b). More particularly, method claim 39 is a process for preparing the composition of claim 9 comprising the step of dissolving a composition of matter as defined in claim 2 in a suitable oil base, preferably medium-chain triglycerides or vegetable oil. The method claim 40 is a process for preparing the composition of matter of claim 13, comprising the step of dissolving a composition of matter as defined in claim 2 in a suitable oil base, preferably medium-chain triglycerides or vegetable oil. Method claims 36 to 38 are directed to preparing a stable phosphatidylserine composition as recited in claim 1.

It is respectfully noted that as a predicate for the restriction requirement, the Examiner has drawn attention to Buchholz et al (US Patent No. 6514973), which it is contended exemplifies a formulation consisting of 9% phosphatidylserine (example 1). Based on this disclosure, the position taken by the Examiner is that since a composition comprising phosphatidylserine is known, this element cannot be a special technical feature. However, the flaw in this reasoning is that the composition claims of the application do not claim phosphatidylserine per se, but a **stable** phosphatidylserine composition, and therefore the prior art document cited and relied upon does not negate the special technical feature of the claimed inventions. For this reason, the requirement for restriction should be withdrawn as contrary to the PCT Rules 13.1 and 13.2. It is earnestly solicited that the requirement be reconsidered and withdrawn.

If for any reason the Examiner believes that a telephone conference is desirable, it is respectfully requested that the Examiner telephone Applicant's attorneys using the contact information below.

Application Ser. No. 10/572,782
Applicants: D. PLATT et al.
Response to Office Action mailed December 4, 2008

Please charge any required fee (or credit any overpayments of fees) to the Deposit
Account of the undersigned, Account No. 500601 (Docket no. 7056-X06-020)

Respectfully submitted,

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